

A "retailer maintaining a place of business in Illinois," as defined in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

June 29, 2000

Dear Xxxxx:

This letter is in response to your letter received April 10, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter serves as a request for a private letter ruling regarding Service Occupation Tax. Since employing a salesperson who resides in your state, we have attempted for months to find out the proper tax status of our company. Our understanding of the law was that our type of custom printing was not subject to tax. We were notified by the Illinois Central Registration that we are liable for Service Occupation Tax. I then spoke with a representative of your Problems Resolution Division. They do not believe that our situation is subject to Service Occupation Tax, as we have no physical location in Illinois.

The following is a complete statement of our situation and activity. We are a printing manufacturing company. We print large format printed advertising materials. This printing is customized based on the customer's specifications and can only be sold to that customer. None of our printing manufacturing facilities is located in Illinois. Our relationship with Illinois is that we have a salesperson residing in Illinois. This salesperson works from their home. Our company has no office or physical location in Illinois. The business cards for our salesperson list the name and location of our manufacturing plant in STATE with a toll free telephone number. While our salesperson does contact customers in Illinois and the surrounding areas, all aspects of the sale are finalized and approved by management at our location in CITY/STATE. For example, credit limits and terms must be approved by our credit manager; price quotes must be obtained from our estimators; approval to accept the sale must be made by our plant or production manager; and details of the job are monitored by our customer service representatives. All of the individuals responsible for these functions are located at our STATE Location. When the printing is complete, the finished product will be shipped by common carrier from our plant in STATE according to shipping instructions, either to a distribution point or dropped shipped to multiple locations nationwide (for example,

BUSINESS and other nationwide chains). We are normally classified as a manufacturer and not subject to any Service Tax. We do not purchase or use the materials in Illinois. The manufacturing and labor involved to produce our product does not take place in Illinois. Many of the sales that may be obtained through our salesperson may not even be shipped into Illinois. Based on these facts and the conflicting opinions from your own branches, we do not believe that we are subject to Service Occupation Tax. For this reason, we are requesting a private ruling.

The tax period at issue is from April 1, 1999 to present. The beginning date coincides with when our salesperson was hired in Illinois. Recently, this salesperson was terminated, and we have no salesperson residing in your state. There are no immediate plans to hire anyone else to replace them. We are not currently under audit or litigation.

I can be contacted at ##### if there are questions or additional is needed in order to obtain a private letter ruling.

In the context of a General Information Letter or Private Letter Ruling, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether your client is responsible to pay tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers. You have indicated in your letter that your client "does not store inventory, occupy offices, have a server, or staff employees within" Illinois. If your client does not accept purchase orders in Illinois or maintain an inventory in Illinois and fill Illinois orders from that inventory, your client is not an Illinois retailer.

A "retailer maintaining a place of business in Illinois," as defined in 86 Ill. Adm. Code 150.201(i), enclosed, is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The Retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability. Determining whether a retailer is maintaining a place of business in Illinois is extremely fact specific. The Department cannot make such a complex ruling with the type of limited information that is provided in requests for General Information Letters or Private Letter Rulings.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

In Illinois you would not be classified as a manufacturer because you custom print materials that are sold at retail to the ultimate consumer.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. The principles outlined above in the Quill decision apply also to servicemen under the Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost

price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify, as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax.

If no sale of service occurs in Illinois (which appears to be the case based on the limited information you have provided), then Service Occupation Tax will not be incurred. At most, your company may have an obligation to collect the Service Use Tax that may be incurred by your Illinois customers. This collection obligation, if any, arises because of the presence of your salesman in this State. However, if your company qualifies as a de minimis serviceman under the final method described above, your Illinois customers will not incur any Service Use Tax liability to be collected.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.